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## Letter Ruling 91-1: Filing Requirements of an Insurance Company that Redomesticates to Massachusetts During the Taxable Year

June 11, 1991

You request a letter ruling on behalf of [Company A] regarding the Department of Revenue's position June 11, 1991 on the filing requirements of an insurance company that redomesticates during the taxable year. In turn, you request a letter ruling as to the calculation of such a company's gross premium excise on a retaliatory tax basis.

In 1988, [Company B], a property and casualty insurance company incorporated in Vermont, formed a plan to redomesticate to Massachusetts. It intended to effectuate this redomestication through a merger of [Company B] with and into [Company C], a newly formed company incorporated in Massachusetts. Simultaneously with the merger, the name of the successor corporation would be changed to [Company D].

On December 31, 1989, at 11:59 p.m., [Company B] merged into [Company C]. [Company C], the surviving company, changed its name to [Company D], which has the same taxpayer identification number and address as [Company C]. Prior to its merger with [Company C], [Company B] did not conduct any business in Massachusetts.

Foreign insurance companies pay an excise <sup>1</sup> on the gross premiums for all policies written or renewed, all additional premiums charged, and all assessments made during the preceding calendar year for insurance of property or interests in Massachusetts. G.L. c. 63, § 23. A return must be filed annually on a calendar year basis on or after March 15th. G.L. c. 62C, §§ 5, 12(e).

Under the retaliatory tax provisions, G.L. c. 63, § 24A a company domiciled in a foreign state that imposes any tax on a Massachusetts insurance company transacting business in the foreign state will be subject to tax in Massachusetts at the foreign state's rate, if that rate is higher than the Massachusetts rate. The retaliatory tax provisions do not apply to insurance companies organized in a foreign state, where the foreign state does not impose retaliatory taxes or where the foreign state, on a reciprocal basis, grants an exemption from retaliatory taxes to insurance companies organized in Massachusetts. Id.

An insurance company's "taxable year" for Massachusetts purposes is not tied to the federal definition of "taxable year": an insurance company's "taxable year" for Massachusetts purposes is the calendar year. See G.L. c. 62C, §§ 5, 12(e); cf. G.L. c. 63, § 30(6). The Commissioner has the authority to determine the form and the type of information required of an insurance company when filing a return. See G.L. c. 62C, §§ 5, 12(e).

Accordingly, a foreign insurance company that conducts business in Massachusetts and then redomesticates to Massachusetts during the taxable year is required to file two short returns. One return requires the insurance company to calculate under the retaliatory basis the gross premiums

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earned on policies written or renewed, all additional premiums charged, and all assessments made during the preceding calendar year for insurance of property and property interests in the Commonwealth while the insurance company was domiciled in the foreign state for the period between January 1, to the time it redomesticates to Massachusetts. See G.L. c. 63, § 23. The other return requires the insurance company to make the same calculation, but as a Massachusetts insurance company, [2](#) for the period starting from the time it redomesticated to Massachusetts to December 31. See G.L. c. 63, § 22.

An insurance company, which prior to its redomestication to Massachusetts on December 31, did not conduct any insurance business in Massachusetts and did not conduct any insurance business on December 31 (although authorized to conduct such a business in Massachusetts), must file a gross premium excise return in Massachusetts as of the date of its redomestication. On such a return, the insurance company must indicate zero gross premiums earned and no tax due.

Very truly yours,

/s/Mitchell Adams  
Mitchell Adams  
Commissioner of Revenue  
June 11, 1991  
LR 91-1

Footnotes:

1 The statute provides that "[e]very foreign insurance company ... except life insurance companies ... shall annually pay an excise upon the gross premiums for all policies written or renewed, all additional premiums charged, and all assessments made during the preceding calendar year for insurance of property or interests in this commonwealth, or which are subjects of insurance by contracts issued through companies or agents therein, exclusive of reinsurance, at the rate of two percent but not less than would be imposed by the laws of the state or county under which such company is organized upon a like insurance company incorporated in this commonwealth, or upon its agents, if doing business to the same extent in such state or country." G.L. c. 63, § 23.

2 The statute provides that "[e]very domestic insurance company ... except life insurance companies ... shall annually pay an excise of two percent upon the gross premiums for all policies written or renewed, all additional premiums charged, and all assessments made by such company or policyholders during the preceding calendar year, exclusive of reinsurance; but such premiums and assessments for policies written or renewed for insurance , exclusive of reinsurance, of property or interests in other states or countries where a tax is actually paid by such company, or its agents, shall not be taxed." G.L. c. 63, § 22.